

Pursuant to EPA's revised final policy on "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations," 65 Fed. Reg. 19618 (April 11, 2000) ("Self-Disclosure Policy"), the United States Environmental Protection Agency, Region III ("EPA"), hereby issues this Notice of Determination ("NOD") regarding violations by E.I. du Pont de Nemours and Company ("DuPont") of Section 313 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11023, and its implementing regulations at 40 C.F.R. Part 372, at the two DuPont facilities (collectively "Facilities") located at 8480 DuPont Road, Route 892 South, Washington, West Virginia, 26181 ("Washington Works") and 5401 Jefferson Davis Highway, Richmond, Virginia, 23234 ("Spruance"). The violations which are the subject of this NOD were voluntarily disclosed to EPA by letters dated June 23, 2004, August 11, 2004, and December 2, 2005.

I. SELF-DISCLOSURE POLICY

1. In order to encourage regulated entities to conduct voluntary compliance evaluations and to voluntarily discover, disclose and correct violations of environmental requirements, EPA promulgated the Self-Disclosure Policy. As an incentive for regulated entities to participate in the Self-Disclosure Policy's voluntary disclosure process, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for violations which are voluntarily disclosed in compliance with the conditions specified in the Self-Disclosure Policy. The conditions of the Self-Disclosure Policy are as follows:

- (1) Systematic Discovery;
- (2) Voluntary Discovery;
- (3) Prompt Disclosure;
- (4) Discovery and Disclosure Independent of Government or Third-Party Plaintiff;
- (5) Correction and Remediation;
- (6) Prevent Recurrence;
- (7) No Repeat Violations;
- (8) Other Violations Excluded; and
- (9) Cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100%, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75%, if the disclosing entity satisfies conditions (2) - (9), above.

However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

2. Pursuant to the Self-Disclosure Policy, and based upon the information and representations provided by DuPont in its letters dated June 23, 2004, August 11, 2004, December 2, 2005, February 6, 2006, and in other submittals, EPA makes the following findings of fact and conclusions of law:
 - a. Section 313 of EPCRA, 42 U.S.C. § 11023, requires the owner or operator of a facility that: 1) has 10 or more employees; 2) is in a primary Standard Industrial

Classification ("SIC") Code 20 through 39 (as in effect on July 1, 1985), among others; and 3) manufactured, processed or otherwise used a toxic chemical listed in 40 C.F.R. § 372.65 in excess of the threshold quantity established in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), during the calendar year for which the form is required, to complete and submit a TRI Form R or Form A for each toxic chemical to the Administrator of EPA and the state in which the facility is located, by July 1 of the following calendar year.

- b. DuPont is and was, at all times relevant to this NOD, a "person" within the meaning of Section 329(7) of EPCRA, 42 U.S.C. §11049(7).
- c. DuPont owned and operated Washington Works, a "facility", as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 8480 DuPont Road, Route 892 South, Washington, West Virginia, 26181, at the time of the violations alleged herein.
- d. DuPont owned and operated Spruance, a "facility," as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), located at 5401 Jefferson Davis Highway, Richmond, Virginia, 23234, at the time of the violations alleged herein.
- e. "Phthalic anhydride," "zinc compounds," "benzoyl peroxide," "chlorine," and "sodium nitrite" are toxic chemicals as defined by 40 C.F.R. § 372.3 and are listed in 40 C.F.R. § 372.65.
- f. By letter dated June 23, 2004, DuPont disclosed to EPA, pursuant to the Self-Disclosure Policy, potential violations of EPCRA § 313, 42 U.S.C. § 11023, that may have occurred when DuPont failed to submit Toxic Chemical Release Inventory ("TRI") Form R or Form A for the phthalic anhydride processed at Washington Works during calendar years 2000, 2001, and 2002, to the Administrator of EPA and the State of West Virginia by July 1, 2001, July 1, 2002, and July 1, 2003, respectively.
- g. By letter dated June 23, 2004, DuPont disclosed to EPA, pursuant to the Self-Disclosure Policy, a potential violation of EPCRA § 313, 42 U.S.C. § 11023, that may have occurred when DuPont failed to submit the TRI Form R or Form A for the zinc compounds processed and otherwise used at Washington Works during calendar year 2001 to the Administrator of EPA and the State of West Virginia by July 1, 2002.
- h. By letter dated June 23, 2004, DuPont disclosed to EPA, pursuant to the Self-Disclosure Policy, a potential violation of EPCRA § 313, 42 U.S.C. § 11023, that may have occurred when DuPont failed to submit the TRI Form R or Form A for

the benzoyl peroxide processed at Washington Works during calendar year 2000 to the Administrator of EPA and the State of West Virginia by July 1, 2001.

- i. As set forth in the Consent Agreement and Final Order, Docket No. EPCRA-03-2006-0062, by letter dated June 23, 2004, DuPont disclosed to EPA, pursuant to the Self-Disclosure Policy, potential violations of EPCRA § 313, 42 U.S.C. § 11023, that may have occurred when DuPont failed to submit the TRI Form R or Form A for the copper compounds processed at Washington Works during calendar years 2000, 2001, and 2002, to the Administrator of EPA and the State of West Virginia by July 1, 2001, July 1, 2002, and July 1, 2003, respectively.
- j. By letter dated August 11, 2004, DuPont disclosed to EPA, pursuant to the Self-Disclosure Policy, potential violations of EPCRA § 313, 42 U.S.C. § 11023, that may have occurred when DuPont failed to submit the TRI Form R or Form A for the chlorine otherwise used at Washington Works during calendar years 2000, 2001, and 2002, to the Administrator of EPA and the State of West Virginia by July 1, 2001, July 1, 2002, and July 1, 2003, respectively.
- k. By letter dated December 2, 2005, DuPont disclosed to EPA, pursuant to the Self-Disclosure Policy, a potential violation of EPCRA § 313, 42 U.S.C. § 11023, that may have occurred when DuPont failed to submit the TRI Form R or Form A for the sodium nitrite manufactured at Spruance during calendar year 2004 to the Administrator of EPA and the Commonwealth of Virginia by July 1, 2005.
- l. DuPont violated Section 313 of EPCRA by failing to submit the TRI Form R or Form A to the Administrator of EPA and the State of West Virginia for the toxic chemical phthalic anhydride processed at Washington Works during calendar years 2000, 2001 and 2002 by July 1, 2001, July 1, 2002, and July 1, 2003, respectively.
- m. DuPont violated Section 313 of EPCRA by failing to submit the TRI Form R or Form A to the Administrator of EPA and the State of West Virginia for the toxic chemical chlorine otherwise used at Washington Works during calendar years 2000, 2001, and 2002 by July 1, 2001, July 1, 2002, and July 1, 2003, respectively.
- n. DuPont violated Section 313 of EPCRA by failing to submit the TRI Form R or Form A to the Administrator of EPA and the State of West Virginia for the toxic chemicals zinc compounds processed and otherwise used at Washington Works during calendar year 2001 by July 1, 2002.
- o. DuPont violated Section 313 of EPCRA by failing to submit the TRI Form R or Form A to the Administrator of EPA and the State of West Virginia for the toxic

chemical benzoyl peroxide processed at Washington Works during calendar year 2000 by July 1, 2001.

- p. DuPont violated Section 313 of EPCRA by failing to submit the TRI Form R or Form A to the Administrator of EPA and the Commonwealth of Virginia for the toxic chemical sodium nitrite manufactured at Spruance during calendar year 2004 by July 1, 2005.
- q. EPCRA Section 325(c)(1), 42 U.S.C. § 11045(c)(1), provides that, for violations of Section 313 of EPCRA, 42 U.S.C. § 11023, EPA may assess a penalty not to exceed \$25,000 per violation. Pursuant to the Debt Collection Improvement Act of 1996 ("DCIA") and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 ("Penalty Inflation Rule"), as revised (64 Fed. Reg. 7121 (February 13, 2004)), violations of Section 313 of EPCRA occurring after January 30, 1997, and before March 16, 2004, are subject to a new statutory maximum penalty of \$27,500 per violation, and violations occurring after March 15, 2004, are subject to an increased statutory maximum penalty of \$32,500 per violation. Each day a violation of Section 313 continues constitutes a separate violation.

III. EPA's DETERMINATION

- 3. Pursuant to the Self-Disclosure Policy, and based upon the information provided by DuPont in, *inter alia*, its letters dated June 23, 2004, August 11, 2004, September 13, 2004, December 2, 2005, and February 6, 2006, and the subsequent analysis by EPA, EPA has concluded that, except as to copper compounds, DuPont has complied with all nine (9) conditions of the Self-Disclosure Policy as follows:
 - a. Systematic Discovery: DuPont's Washington Works Section 313 Coordinator discovered the phthalic anhydride, benzoyl peroxide, and zinc compounds violations on June 2, 2004, and the chlorine violations on July 22, 2004, through its compliance management system. DuPont Engineering's Environmental Consultant discovered the sodium nitrite violation at Spruance on November 15, 2005, through its compliance management system.
 - b. Voluntary Discovery: DuPont discovered the aforementioned violations of Section 313 of EPCRA, 42 U.S.C. § 11023, on a voluntary basis and not as a result of a legally mandated monitoring or sampling requirement prescribed by statute, regulation, permit, or judicial or administrative order, or consent agreement.
 - c. Prompt Disclosure: The written disclosures of June 23, 2004, August 11, 2004, and December 2, 2005, by DuPont were made within twenty-one (21) days of the discovery of potential EPCRA violations that may have occurred at the Facilities.

d. Discovery and Disclosure Independent of Government or Third Party Plaintiff: The discovery and disclosure by DuPont of the potential violations occurred prior to the commencement or issuance of any federal, state or local inspection, investigation, information request, notice of citizen suit, complaint by a third party, report of the violation by a "whistleblower" or imminent discovery of the violation by a regulatory agency.

e. Correction and Remediation: DuPont filed its Form Rs within 60 calendar days of discovery.

f. Prevent Recurrence: DuPont has held additional training of its personnel, has instituted a schedule for reporting and periodically conducts inter- and intra-plant audits to prevent recurrence at the Facilities.

g. No Repeat Violations: Neither the specific violations of Section 313, 42 U.S.C. § 11023, described herein, nor a closely related violation has occurred within the past three (3) years at either of the Facilities. Additionally, such violations have not occurred within the past five (5) years as part of a pattern at multiple facilities owned or operated by DuPont.

h. Other Violations Excluded: The disclosed violations did not result in actual serious harm and did not present a risk of imminent and substantial endangerment to human health or the environment, nor did the disclosed violations violate the specific terms of any judicial or administrative order or consent agreement.

i. Cooperation: DuPont has cooperated with EPA and has provided such information as necessary and requested by EPA to determine the applicability of the Self-Disclosure Policy.

4. In calculating the civil penalty to be assessed for a violation of EPCRA § 313, EPA considers EPA's *Enforcement Response Policy for Section 313 of EPCRA* ("ERP"), dated August 10, 1992. The ERP provides a rational, consistent and equitable penalty calculation methodology. Based upon the information provided by DuPont as well as EPA's consideration of the facts of this case and the ERP, EPA has determined that the total gravity-based civil penalty that would be appropriate for the violations described herein would be **\$162,940.00**.
5. EPA has determined that, except as to copper compounds, DuPont has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100% reduction in the gravity-based component of the civil penalty of \$162,940.00 for the violations described herein. No significant economic benefit of non-compliance has accrued to DuPont as a result of the violations described herein. Therefore, EPA will not assess a gravity-based civil

penalty against DuPont for the aforementioned violations, nor will the Agency assess a penalty concerning any economic benefit of non-compliance which may have accrued to DuPont.

6. EPA has determined that DuPont has not met all the conditions of the Self-Disclosure Policy with respect to the copper compounds violations as such violations were not disclosed within 21 days of their discovery. Accordingly, such violations are ineligible for penalty reduction pursuant to the Self-Disclosure Policy. Such violations have been resolved by the filing of a Consent Agreement and Final Order, Docket No. EPCRA-03-2006-0062, on March 21, 2006.

IV. RESERVATION OF RIGHTS

7. This NOD resolves only the potential claims for civil penalties pursuant to EPCRA for the violations alleged herein. Nothing in this NOD is intended to be nor shall be construed to operate in any way to resolve criminal liability, if any, of DuPont. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including those alleged herein, of EPCRA or any other environmental law.
8. This NOD shall not relieve DuPont of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of EPCRA or any regulations promulgated thereunder.
9. EPA reserves the right to undertake any action against any person, including DuPont, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
10. EPA reserves the right to revoke this NOD and thereby render such Notice of Determination null and void if and to the extent that any information or certification provided by DuPont, upon which any civil penalty mitigation granted herein for such violation was based, was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any and all civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by DuPont.

In issuing this Notice of Determination, EPA seeks to promote self-auditing by DuPont, and expects DuPont to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the
U.S. Environmental Protection Agency, Region III**

DATE: June 22, 2006

By: 

James J. Burke, Director
Waste and Chemicals
Management Division


CERTIFICATE OF SERVICE

I certify that on the date noted below, I delivered by hand the original and one copy of this Notice of Determination to the Regional Hearing Clerk, U.S. EPA, Region III, and one copy to the addressee below as indicated:

VIA FEDERAL EXPRESS:

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Dated: 6/27/06



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